

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #8	CCRB Case #: 201507260	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/18/2015 12:30 AM	Location of Incident: Myrtle Avenue and Broadway and en route to the 81st Precinct stationhouse	Precinct: 81	18 Mo. SOL 2/18/2017	EO SOL 2/18/2017	
Date/Time CV Reported Thu, 08/27/2015 3:14 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 08/27/2015 3:14 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Raul Torres	24953	958127	081 PCT
2. POM Ronald Woody	1412	955678	HBK IRT
3. POM Charles Fox	31129	941775	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Silda Kokomeci	17422	955020	HBK IRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Charles Fox	Force: PO Charles Fox used a chokehold against § 87(2)(b) at Myrtle Avenue and Broadway in Brooklyn.	
B.POM Charles Fox	Force: PO Charles Fox used physical force against § 87(2)(b) at Myrtle Avenue and Broadway in Brooklyn.	
C.POM Raul Torres	Force: PO Raul Torres used physical force against § 87(2)(b) at Myrtle Avenue and Broadway in Brooklyn.	
D.POM Raul Torres	Discourtesy: PO Raul Torres spoke discourteously to § 87(2)(b) en route to the 81st Precinct stationhouse.	
§ 87(4-b) § 87(2)(g)		

### Case Summary

At approximately 12:30 a.m. on August 18, 2015, § 87(2)(b) entered the taxi cab of § 87(2)(b) after finishing her bartending shift and then socializing at a different bar on Second Avenue between 13<sup>th</sup> and 14<sup>th</sup> Streets in Manhattan. § 87(2)(b) instructed § 87(2)(b) to take her to Myrtle Avenue and Broadway in Brooklyn and fell asleep. However, she was reportedly awoken when they arrived somewhere in Brownsville, so she again told § 87(2)(b) to take her to Myrtle Avenue and Broadway before falling asleep once more. § 87(2)(b) awoke after arriving at the correct location, but saw that the fare was significantly more expensive than expected and so reportedly paid only half the fare before exiting and walking away. Immediately thereafter, § 87(2)(b) alerted two nearby officers—identified through investigation as PO Charles Fox and PO Raul Torres of the 81<sup>st</sup> Precinct—who followed § 87(2)(b) and stopped her in an attempt to make her pay the fare. At some point, two additional officers—identified as PO Silda Kokomeci and PO Ronald Woody of Housing Borough Brooklyn Impact Response Team—stopped at the scene to assist.

After some discussion, § 87(2)(b) returned to § 87(2)(b)'s cab and threw money at him. Shortly thereafter, officers determined that she would be arrested, so PO Fox allegedly grabbed her left arm and her throat with his open palm (**Allegation A**), while PO Torres also grabbed her left arm and PO Woody grabbed her right arm. Despite § 87(2)(b)'s exclamation that PO Fox was choking her, the officers allegedly pushed her against a brick wall and handcuffed her before escorting her to the police car. The pressure that PO Fox and PO Torres allegedly applied to § 87(2)(b)'s left arm caused significant bruising (**Allegations B and C**). Moreover, while en route to the 81<sup>st</sup> Precinct stationhouse, § 87(2)(b) complained that she had been taken advantage of, to which PO Torres allegedly replied, "I don't believe a fucking word you say" (**Allegation D**). § 87(2)(b) was ultimately arrested for § 87(2)(b).

### Mediation, Civil and Criminal Histories

- This case was investigated due to § 87(2)(b)'s refusal to mediate the complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of October 16, 2015, no notice of claim has been filed with the City of New York regarding this incident (see Board Review #2).

### Civilian and Officer CCRB Histories

- PO Fox has been a member of the NYPD for nine years and has been a subject in one prior CCRB case involving only one allegation of discourtesy, which was unfounded (see Board Review #3).
- PO Torres has been a member of the NYPD for less than one year and this is the first CCRB complaint against him (see Board Review #4).
- PO Woody has been a member of the NYPD for two years and has been a subject in one prior CCRB case involving two allegations, both of which were withdrawn (see Board Review #5).
- § 87(2)(b) has filed only one other CCRB complaint § 87(2)(b).

## **Findings and Recommendations**

### **Allegation A—Force: PO Charles Fox used a chokehold against § 87(2)(b) at Myrtle Avenue and Broadway in Brooklyn.**

§ 87(2)(b) (see Board Review #7) stated that she consumed approximately five to six beers over the several hours prior to entering the cab and that she chose to leave the bar because she was intoxicated to a level at which “something bad was gonna happen.” However, she claimed that as soon as she saw officers at the scene, she became fully alert. She initially alleged that as soon as she threw the money at § 87(2)(b) PO Fox grabbed her throat with his open palm from the front and squeezed for five to ten seconds as she yelled for him to stop choking her. However, she subsequently alleged that after throwing the money but prior to the officers grabbing her, she called a friend, § 87(2)(b) using her cell phone to explain what was happening. When further questioned about the sequence of events, § 87(2)(b) then stated that she called § 87(2)(b) after the officers grabbed her and was forced to hang up after only thirty seconds. Ultimately, she was unclear about the specific sequence of events and did not know whether or not her breathing was restricted as a result of the grab. Medical records from one day after this incident (Privileged Documents) made no mention of any contact with or injury to her throat or neck. The records did indicate that § 87(2)(b) suffers from ADHD and anxiety, for which she takes two prescription medications.

§ 87(2)(b) (see Board Review #8) confirmed that § 87(2)(b) smelled strongly of alcohol and appeared intoxicated due to her sleepiness. He further stated that when he initially arrived at Myrtle Avenue and Broadway, he notified her but she instructed him to keep driving along Broadway. § 87(2)(b) maintained that he did so and repeatedly asked her where to stop, but she merely kept telling him to drive before falling back asleep. § 87(2)(b) stated that he drove fifteen to twenty blocks before returning to Myrtle and Broadway, at which point he alerted PO Torres and PO Fox, who were parked just in front of his cab. § 87(2)(b) explained that despite instructions from officers to pay the fare, § 87(2)(b) exited without giving him any money and quickly walked away. § 87(2)(b) maintained that the officers pursued her and stopped her approximately one to one and a half blocks away while he returned to his vehicle. He stated that they returned several minutes later, at which point § 87(2)(b) slammed his front passenger’s side window with one hand before throwing \$20 at him, which was only half of the full fare. § 87(2)(b) maintained that PO Kokomeci and PO Woody then arrived and over the next several minutes, all four officers attempted to convince her to pay the rest of the fare while she made multiple calls on her cell phone. Given her continued refusals to pay, the officers then arrested her. § 87(2)(b) maintained that he was in the driver’s seat of his car at the time, so his view was partially obstructed. However, he maintained that he only observed the officers grabbing § 87(2)(b)’s arms and at no point did he see any officer grab her throat or neck. He also stated that he did not hear § 87(2)(b) complain about being choked.

§ 87(2)(b) (see Board Review #9) confirmed that at the time of her arrest, § 87(2)(b) called him two times for a few minutes each. On both calls, he stated that she was crying while voices whom he assumed to be officers instructed her to put the phone away. § 87(2)(b) stated that § 87(2)(b) was agitated and speaking in a heightened tone, though she was not yelling. Apart from the emotional distress of the situation, he did not perceive § 87(2)(b)’s voice to be physically impaired in any way. § 87(2)(b) added that when he saw § 87(2)(b) the

following day, she told him she had been tackled by officers, though she provided no details of this interaction. When specifically asked about it, § 87(2)(b) stated that § 87(2)(b) may have told him she was choked, but he could not definitively recall.

§ 87(2)(g)

§ 87(2)(b) All four officers also believed § 87(2)(b) to be intoxicated based on her strong odor of alcohol as well as her continuous yelling and cursing throughout the arrest. PO Fox and PO Charles corroborated that after pursuing her down the street and convincing her to return to the cab, she slammed § 87(2)(b)'s window and threw the money at him. All officers were consistent that PO Kokomeci and PO Woody arrived around that time and spent several more minutes trying to convince § 87(2)(b) to pay the fare. PO Torres, PO Kokomeci, and PO Woody all stated that amidst her refusals to do so, § 87(2)(b) called § 87(2)(b) on her cell phone. When officers eventually initiated the arrest, all four were consistent that they only made contact with her arms and shoulder. PO Fox denied ever making contact with her throat or neck or taking any action that would have restricted her breathing, which was corroborated by all three other officers. However, PO Torres stated that when the officers first chased after her to bring her back to the cab, § 87(2)(b) shouted for them to stop choking her despite no officer being in contact at that point. PO Kokomeci stated that § 87(2)(b) shouted about being choked after she was handcuffed, again while no officer was in contact with her. Neither PO Fox nor PO Woody recalled § 87(2)(b) making any statements about being choked.

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**Allegation B—Force: PO Charles Fox used physical force against § 87(2)(b) at Myrtle Avenue and Broadway in Brooklyn.**

**Allegation C—Force: PO Raul Torres used physical force against § 87(2)(b) at Myrtle Avenue and Broadway in Brooklyn.**

§ 87(2)(b) alleged that while handcuffing her, PO Torres and PO Fox both grabbed and pulled her left arm so hard that it caused a large area of bruising, as shown in photographs that

she reportedly took one day after the incident (see Board Reviews #14 and #15). She further alleged that after the initial grab, the officers collectively pushed her against a brick wall so that she hit the back of her head, causing minor temporary pain but no notable marks or injuries. § 87(2)(b) attributed the bruising to PO Torres and PO Fox's aggressive pulling on her upper left arm throughout the handcuffing process. Although she also maintained that she did not resist at any point, she stated that the initial force used to push back her upper body towards the wall caused her torso to twist and one of her legs to inadvertently fly up and strike PO Kokomeci on the right hip. § 87(2)(b) asserted that the kick was not intentional. Medical records showed that § 87(2)(b) complained of dull, moderate, radiating pain on her upper left arm and right wrist as a result of struggling with police officers. Both of the aforementioned areas were bruised, but there was no tissue damage or trauma on her head or scalp.

All officers confirmed § 87(2)(b) ignored multiple orders to place her hands behind her back, prompting officers to grab her by the arms in an attempt to pull them behind her back. Furthermore, all four officers as well as § 87(2)(b) asserted that § 87(2)(b) then actively resisted by repeatedly pulling her arms away and shifting her torso so as to escape their grasp. All officers and § 87(2)(b) were also consistent that amidst the struggle for control of her arms, § 87(2)(b) kicked at PO Kokomeci. Although § 87(2)(b) did not see § 87(2)(b) connect her kick, PO Kokomeci maintained that § 87(2)(b) kicked her left leg as well as used one of her flailing arms to swipe her left wrist, scratch her skin, and break her chain bracelet. All three other officers corroborated that § 87(2)(b) made contact with the kick while PO Torres and PO Woody corroborated that she swiped PO Kokomeci's arm.

PO Fox, PO Torres, and PO Woody were all consistent that, given her resistance, § 87(2)(b)'s waist area was placed against an empty fruit stand outside the supermarket. Although PO Kokomeci did not recall any fruit stand, she and the other officers all denied that § 87(2)(b) was ever in contact with any wall. § 87(2)(b) confirmed that she was handcuffed in front of the fruit stand, but he did not see any part of her body in contact with it. Additionally, PO Torres and PO Fox both stated that after § 87(2)(b) was successfully handcuffed, she sat down on the ground and refused to stand up despite multiple requests from multiple officers to do so. Both officers stated that they hooked their arms underneath hers and lifted her up as she went limp and pulled down against them. PO Fox did not mention any differential in pressure, but PO Torres stated that she applied significantly more downward pressure on her left side, which was the arm he was lifting. PO Kokomeci, PO Woody, and § 87(2)(b) did not observe § 87(2)(b) on the ground at any point. The only officer who reported seeing a bruise on § 87(2)(b) was PO Torres, though he claimed that it was much smaller than the one shown in the photographs. PO Fox believed that the only action he or PO Torres took that could have caused the alleged bruising would have been the force needed to counteract § 87(2)(b)'s entire body weight as they lifted her to her feet.

An officer is required to use the minimum force necessary to effect an arrest. Patrol Guide Procedure 203-11(see Board Review #16).

§ 87(2)(g)

§ 87(2)(g)

**Allegation D—Discourtesy: PO Raul Torres spoke discourteously to § 87(2)(b) en route to the 81<sup>st</sup> Precinct stationhouse.**

§ 87(2)(b) initially stated that as she exited the cab and quickly walked away, either PO Torres or PO Fox stated, “You have to pay for this fucking cab.” However, upon further questioning, § 87(2)(b) did not recall making that claim and instead stated that the only use of profanity came after she was handcuffed and placed in the police car. At that point, she alleged that after telling PO Torres, who was sitting next to her in the back seat, that § 87(2)(b) had taken advantage of her, PO Torres replied, “I don’t believe a fucking word you say.” It is undisputed that § 87(2)(b) used the word or variations of the word “fuck” multiple times throughout the incident.

Although PO Torres confirmed that he sat next to § 87(2)(b) in the back seat as they drove to the stationhouse, he maintained that she made an allegation of sexual assault against PO Woody. PO Torres stated that in response he did tell § 87(2)(b) that he did not believe her, but he denied using the word “fucking” or any other profanity at any point. PO Fox, who was the only other person in the car at the time, did not hear § 87(2)(b) complain about either § 87(2)(b) or PO Woody, and similarly did not hear PO Torres tell her that he did not believe her. PO Fox did not recall hearing PO Torres use the word “fuck” or any profanity while speaking to her.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

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Squad: \_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date